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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Report by Mr. Fanuel Jarirentundu Kozonguizi, the independent expert, on the conditions in Somalia, prepared in accordance with paragraph 6 of Commission on Human Rights resolution 1993/86

I. INTRODUCTION

1. The mandate of the independent expert was established by the Commission on Human Rights under resolution 1993/86, adopted on 10 March 1993, and subsequently approved by the Economic and Social Council decision 1993/282 of 28 July 1993.

2. In paragraph 1 of the above-mentioned resolution, the Commission requested the Secretary-General to appoint for a period of one year a person having wide experience in the field of human rights as an independent expert, to assist the Special Representative of the Secretary-General for Somalia through development of a long-term programme of advisory services for re-establishing human rights and the rule of law, including a democratic Constitution, as well as the eventual holding of periodic and genuine elections by universal suffrage and secret ballot.

3. The Commission also requested the Secretary-General to give priority to implementing the programme recommended by the independent expert, as conditions in Somalia permit, including through the programme of advisory services of the Centre for Human Rights, in close cooperation with the Special Representative of the Secretary-General, the United Nations Peace-keeping Operation in Somalia and other United Nations entities, such as the Electoral Assistance Unit, as well as humanitarian and non-governmental organizations (para. 2).

4. Furthermore, the Commission urged the Secretary-General to consider recommending the establishment of a unit within the United Nations operation in Somalia to assist in the promotion and protection of human rights and in

encouraging respect for humanitarian law, as well as the implementation of the recommendations by the independent expert (para. 3). The present report is submitted pursuant to paragraph 6 of the Commission's resolution.

II. ASSESSMENT OF THE CURRENT SITUATION

5. Despite the widely reported atrocities committed against the Somali people by the regime of ousted president General Siad Barre for over two decades, since January 1991, violations of human rights have increased even more. The absence of an accountable Government, the lack of an infrastructure in the country, combined with a situation of almost total anarchy, renders even difficult the capture and bringing to justice of the most wanted perpetrators of violations of human rights in the country.

6. The expert would like to refer in this connection to the fact that the United Nations had to offer a reward of $25,000 for the capture of General Mohammed Farrah Aidid in the wake of the criminal attack committed against UNOSOM II forces, in which 25 Pakistani soldiers were killed, 10 listed as missing and 57 wounded (54 Pakistani, 3 United States). 1/

7. Moreover, when United States Army Rangers captured the chief aide to General Aidid, Mr. Osman Atto, on 21 September 1993, it was reported that General Aidid's supporters threatened attacks on United Nations headquarters and on foreigners, if Mr. Atto were not released soon. 2/

8. Although the expert concurs with the position adopted in the Security Council when it affirmed that "all officials of the United Nations and all experts on mission for the United Nations in Somalia enjoy the privileges and immunities provided for in the Convention on the Principles and Immunities of the United Nations of 1946 and in any other relevant instrument and that all parties, movements and factions in Somalia are required to allow them full freedom of movement and all necessary facilities", 3/ he considers it untimely to undertake, under the present circumstances, a field mission to investigate on the spot the rampant violations of human rights committed by the parties concerned.

9. Moreover, the expert received allegations as to human rights violations committed by the United Nations forces in Somalia. Those allegations include conduct in violation of the humanitarian law principles contained in the Geneva Conventions of 1949 and the Additional Protocols of 1977, now considered to form part of customary international law.

III. MANDATE OF THE INDEPENDENT EXPERT

10. The mandate entrusted to the expert by the Commission on Human Rights should be implemented by its terms of reference in cooperation with the Special Representative of the Secretary-General and therefore activities proposed or already undertaken within the framework of UNOSOM II should be considered a point of departure for developing a long-term programme of advisory services.

11. In this connection, it is important to recall the political intention of 15 Somali leaders contained in the Addis Ababa Agreement on the First Session of the Conference on National Reconciliation in Somalia of 27 March 1993. 4/ A follow-up all Somali peace conference was held in Mogadishu on 30 September and 1 October 1993 attended by 12 of the 15 Somali political movements which had signed the Addis Ababa Agreement.

12. The Agreement in section I (Disarmament and Security) provides, inter alia, that the leaders committed themselves to complete and simultaneous disarmament throughout the country in accordance with the disarmament concept and time-frame set by the Cease-Fire Agreement of January 1993. 5/

13. The expert, therefore, can only deplore that despite several calls from the Security Council 6/ for a comprehensive and effective programme for disarming Somali parties, including movements and factions, the Somali leaders continue to violate their commitments made on 27 March and 1 October 1993. This includes their request to UNOSOM to apply strong and effective sanctions against those responsible for any violation of the Cease-fire Agreement.

14. The expert, furthermore, wholeheartedly concurs with the need, expressed in the Addis Ababa Agreement, to establish an impartial National and Regional Police Force in all regions of the country, but it is clear that a critical element in creating the security conditions necessary for the re-establishment of such a force is the real disarmament of the entire country.

15. With regard to restoration of property, the parties to the Agreement affirmed that all private or public properties that were illegally confiscated, robbed, stolen, seized, embedded or taken by other fraudulent means must be returned to their rightful owners. The expert welcomes in this connection the idea that UNOSOM will establish a property claims investigation team to deal with such crimes, and that all property crimes not under the jurisdiction of the team will be directed to the Somali police for investigation. 7/

16. The expert considers the proposed establishment of transitional mechanisms, which should prepare the country for a stable and democratic future, a very essential part of the Agreement. The expert is convinced that his mandate related to the development of a long-term programme of advisory services could be very useful once all the four basic transitional organs of authority are effectively in place. He is aware that quick action is needed as the transitional period will last for a period of two years effective from the date of signature of the Agreement, that is, until 27 March 1995.

17. The following organs were established by the Agreement:

(a) The Transitional Council, which will be the repository of Somali sovereignty. It would have the authority to appoint various committees, including the Transitional charter Drafting Committee, which would draft a democratic constitution guided by Somali traditional ethics and basic principles of human rights. In addition, the Council should establish an Independent Judiciary as requested by the Security Council with the assistance of UNOSOM. By 31 March 1995, the Transitional National Council will have determined what type of judicial system and laws are required for the country. UNOSOM II intends to complete its mission by March 1995. 8/

(b) Central Administrative Departments, which will function under the supervision of the Transitional Council. Their primary function will be to re-establish and operate the departments of civil administration, social, economic and humanitarian affairs, and thus pave the way for the re-establishment and operation of a formal government.

(c) Regional Councils shall be established in all existing 18 regions of Somalia. The Councils will be entrusted primarily with the task of implementing humanitarian, social and economic programmes in coordination with the Transitional National Council and they will also assist in the conducting of the internationally-supervised census. The Regional Councils will liaise with UNOSOM II, United Nations specialized agencies, non-governmental organizations and other relevant organizations directly and through the Central Administrative Departments and the Transitional National Council. The Regional Councils shall also be responsible for law and order at the regional level. A regional police force and a regional judiciary will be the enforcement mechanism at the regional level.

(d) District Councils. Thus far, 25 District Councils have been established. District Council members shall be appointed through election or through consensus-based selection in accordance with Somali traditions. The District Councils shall be responsible for managing public safety, health, education and reconstruction.

18. Regarding the investigation and prosecution of serious violations of international humanitarian law required under Security Council resolution 814 (1993) of 26 March 1993, the expert will collaborate with UNOSOM and its recently established Office of Human Rights. The establishment of a local Somali human rights committee could facilitate, when conditions permit, on-the-spot investigation of violations of human rights.

19. The expert welcomes the idea of UNOSOM to establish a team of international specialists to investigate, in cooperation with the Somali police human rights violations committed against the Somali people, as well as international assistance workers. Such violations include mass murders of Somali citizens, murder, attempted murder and threats of bodily harm against international assistance workers and UNOSOM employees.

IV. CONCLUSIONS

20. The expert recognizes that under the present circumstances it is premature to propose any concrete activity to be undertaken under the advisory services programme. If the situation does not improve in the near future, he would consider recommending to the Commission on Human Rights to change his mandate or to revert the situation to other United Nations bodies.

21. Implementation of his current mandate can only take place once all parties concerned decide to commit themselves to the Addis Ababa Agreement of 27 March 1993. A complete disarmament of all sides is a sine qua non for security and stability in the country. An independent group of human rights monitors should be established to receive complaints and collect and investigate

reports of violations of human rights and humanitarian law, transmit them to the UNOSOM Office or, where appropriate, to the Centre for Human Rights.

22. In conformity with the request of the Security Council, perpetrators of serious violations of human rights should be apprehended and brought to justice. International lawyers could conduct these trials, if Somali judges decline to hear cases as a result of threats or intimidation. Suspects would be given a trial in accordance with internationally accepted standards, but no impunity for those offences should apply.

Notes

1/ Report of the Secretary-General on the implementation of Security Council resolution 837 (1993) (S/26022), para. 9.

2/ International Herald Tribune, 22 September 1993, p. 2.

3/ Security Council resolution 767 (1992) of 24 July 1992, para. 15.

4/ Transmitted to the United Nations Secretariat by a letter from the Transitional Government of Ethiopia dated 30 March 1993.

5/ See S/25168, annex III.

6/ Security Council resolution 837 (1993) of 6 June 1993, para. 3.

7/ Further report of the Secretary-General submitted in pursuance of paragraph 18 of Security Council resolution 814 (1993) (S/26317, annex I), paras. 60, 61.

8/ Security Council resolution 865 (1993) of 22 September 1993, para. 4.